IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

OP.No. 11792 of 2003(D)
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PETITIONERS:
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1. D.RAGHUNATHAN, S/O. DANDAPANI CHETTIAR
'SUMANGALI', VANIAMKULAM AMSOM, DESOM
OTTAPPALAM TALUK, PALAKKAD DISTRICT.

2. PARAMARAJAN,
S/O. PHANISWAMI CHETTIAR, VANLAMULAM AMSOM,
DESOM, OTTAPPALAM TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.K.MOHANA KANNAN

RESPONDENTS:
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OTTAPPALAM KURIES AND LOANS PRIVATE
LIMITED REPRESENTED BY ITS MANAGING DIRECTOR
K.BALAKRISHNAN.

BY ADV. SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.20192/2003 IN O.P.No.11792/2003

DISMISSED

23/6/2007 SD/=PIUS C.KURIAKOSE, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE EXECUTION PETITION FILED BY THE RESPONDENT AS E.P.434/2002 ON THE FILE OF THE MUNSIFF COURT, OTTAPPALAM.

EXT.P2 TRUE COPY OF THE APPLICATION E.A.NO.188/2003 FILED BY THE PETITIONERS AND 2ND JUDGMENT DEBTOR.

EXT.P3 TRUE COPY OF THE APPLICATION FILED BY THE PETITIONERS AND 2ND JUDGMENT DEBTOR AS E.A.NO.193/2003.

EXT.P4 TRUE COPY OF THE RECEIPT FOR RS.2500/- OBTAINED FROM THE RESPONDENT DTD.29.5.2003.

TRUE COPY

P.A.TO JUDGE

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**PIUS C. KURIAKOSE, J.**

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**O.P. NO. 11792 of 2003**

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**Dated this the 21st day of June 2007**

**JUDGMENT**

The judgment debtors impugn an order passed by the Execution Court on 27.3.2003 in E.A. No.188 of 2003 setting aside the ex-parte order and directing the decree holder to point out the judgment debtors to the Amin so as to facilitate arrest. Obviously the order of arrest which was originally issued against the petitioners was not preceded by an enquiry as envisaged by Rule 40 of Order 21 C.P.C into the financial ability of the petitioners to pay off the decree debt and also as to whether there has been wilful negligence on their part in paying the decree debt. That order was an ex-parte order and the learned Munsiff actually set aside that order. Having set aside that order, what should have been done was to post the execution petition for enquiry into the objections raised by the petitioners

regarding their liability to be arrested and detained in civil prison. In stead of doing that, the court below issued fresh warrants which, I must agree with the learned counsel for the petitioners was highly improper.

2 While admitting this writ petition and granting stay, this court imposed a condition that the petitioners shall pay a sum of Rs.5,000/- towards decree debt. Mr. Mohana Kannan, the learned counsel for the petitioners submits that the above condition has been complied with and that the balance will be around Rs.35,000/-. Whatever that be, the impugned order is bad and the same is to be set aside. But considering the totality of the circumstances attending on this case, I am inclined to set aside the impugned order only on condition that till such a time as enquiry is completed and fresh orders are passed by the court, the petitioner shall pay every month commencing from first of August 2007 a sum of Rs.1,500/-(Rupees One Thousand Five Hundred only) towards the E.P.claim The court below is directed to hold an enquiry into the objections which have been raised by the petitioners on the question as to whether the petitioners are liable to be arrested and detained for recovery of the decree debt

and pass fresh orders.

The original petition is allowed as above. No cost.

**PIUS C. KURIAKOSE,**
**JUDGE.**

Dpk

PIUS C.KURIAKOSE, J
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O.P. NO.11792/2003

JUDGMENT

21ST JULY 2007